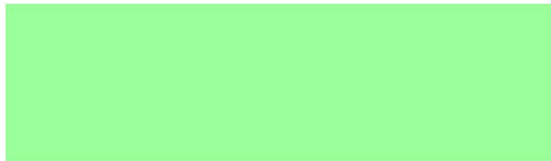


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



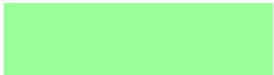
DATE: **DEC 19 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: 

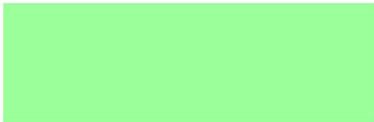
IN RE:

Petitioner:

Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. After granting the petitioner's motion to reconsider, the AAO again dismissed the appeal on its merits. The petitioner filed a motion to reopen and reconsider, which the AAO dismissed as untimely and improperly filed. The petitioner now files another motion to reconsider. The motion will be dismissed pursuant to the regulations at 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), and 103.5(a)(4).

A petitioner must file a motion to reconsider within 33 days of an adverse decision sent by ordinary mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). In the instant case, the petitioner filed the current motion to reconsider on October 1, 2013, 35 days after the AAO dismissed the petitioner's motion to reopen and reconsider on August 27, 2013. The record shows that the AAO mailed its August 27, 2013 decision to the petitioner at its business address and to counsel of record. Therefore, the petitioner's current motion is untimely and must be dismissed for that reason.

Furthermore, a motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4). In the instant case, a statement of judicial proceedings does not accompany the petitioner's motion. Therefore, the petitioner's motion must also be dismissed for failing to meet the requirements of the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C).

Even if the petitioner had timely and properly filed the instant motion, the AAO would have dismissed it. The motion asserts that the petitioner timely filed its motion to reopen and reconsider on June 25, 2013. Counsel claims that he did not receive the AAO's May 22, 2013 decision, which granted the petitioner's previous motion to reconsider but dismissed its appeal, until May 26, 2013.

Counsel misinterprets USCIS regulations. The applicable regulation measures the period of time in which to file a motion from the date of the adverse decision, not from the date of the adverse decision's receipt. *See* 8 C.F.R. § 103.5(a)(1) (a petitioner must file a motion "within 30 days of the decision that the motion seeks to [reopen and/or reconsider]" (emphasis added); *cf.*, *e.g.*, 8 C.F.R. § 103.3(a)(2)(iii) ("Within 45 days of receipt of the appeal," a USCIS officer may treat an appeal as motion and take favorable action.) (emphasis added).

Also, counsel's assertion does not establish that he received the AAO's May 22, 2013 decision on May 26, 2013. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (the assertions of counsel do not constitute evidence). Nor does counsel address the improper filing of the previous Form I-290B, whereby counsel checked box 2.B on the form indicating that the filing was an appeal.¹ Because the petitioner's current motion does

¹ The AAO lacks appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at former 8 C.F.R. § 103.1(f)(3)(iii), as in effect on February 28, 2003. *See* U.S. Dep't of Homeland Security Delegation No. 0150.1 (effective Mar. 1, 2003).

not establish that it timely and properly filed its previous motion, the AAO would have dismissed the current motion even if it had been timely and properly filed.

Motions in immigration proceedings are disfavored. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94, 110 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *Id.*

In visa petition proceedings, a petitioner must establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The instant petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.